Excerpt from CSO Response: Interim Approvals

With regard to the larger point, states should bear in mind that interim approvals have been a way for NOAA and EPA to help states focus on remaining conditions and provide guidance on how those conditions could be addressed. It is critical that states understand the distinction between interim and final approval. No decisions are final until the proposed decision has gone through public comment, potential ESA or Tribal consultation, and formal approval of a State's entire coastal nonpoint pollution control program has been conferred by the top administration officials at EPA and NOAA that have been delegated the authority for these final approvals. This reminder appears in the cover letter of all formal interim decision documents transmitted to the States. If the federal partners learn that facts on the ground have changed sufficiently to call an interim decision into question prior to formal and final program approval, then the federal partners have an obligation to inform the State that the prior interim decision is in jeopardy. An easy example of this is if a State relied on one of its statutes or a regulation to meet a particular management measure and then that law or rule was rescinded or substantially altered prior to formal final program approval.

States were originally supposed to address all their conditions within a few years. However, given the complexities of the 6217 program, now 14/15 years have passed since most states received conditional approval. Given the significant time that can pass between when NOAA and EPA initially issue an interim approval and when NOAA and EPA are ready to announce our intent to fully approve a state's program in the federal register, it is very likely we will need to work closely with the state to update all approval rationales to ensure the programs and authorities discussed within them are still applicable and the most current status of those programs are reflected.

The acid test is this: The federal partners should not proceed to final program approval (via federal register notice) if they believe that a State does not meet all of its outstanding conditions. Our rationales for how the state has addressed its original condition must be programmatically and legally defensible. This has become increasingly important in light of the Oregon lawsuit and the increased outside scrutiny of state programs, including Washington State's pending final approval. NOAA and EPA do not revisit management measures that were fully approved when a state received conditional approval in its original findings document, but we do have an obligation to revisit interim approval decisions if new facts on the ground no longer support them. All rationales for final approval need to be up-to-date and defensible. See state conditional approval findings posted here:
http://coastalmanagement.noaa.gov/nonpoint/pro_approve.html